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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY,
PETITIONER
v.
RUDOLPH G. BABCOCK

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

CAN A STATE COURT GRANT A LITIGANT A SEMINARY DIVINITY DEGREE OVER THE OBJECTION OF THE ECCLESIASTICAL AUTHORITY OF THE CHURCH'S SEMINARY?

IS A SEMINARY OF THE SOUTHERN BAPTIST CONVENTION A RELIGIOUS ORGANIZATION ENTITLED TO FIRST AMENDMENT PROTECTIONS?

DOES A CIVIL COURT HAVE SUBJECT MATTER JURISDICTION TO REVIEW A CHURCH SEMINARY'S FINDING THAT A CANDIDATE FOR A MINISTERIAL DIVINITY DEGREE IS SPIRITUALLY AND MORALLY UNFIT FOR CHRISTIAN MINISTRY?

LIST OF ALL PARTIES

All of the parties in the Court of Appeal of Louisiana, Fourth Circuit, are listed in the caption.[1]

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[1] Petitioner is the "wholly owned" subsidiary of The Southern Baptist Convention, although both the parent denomination and petitioner are religious nonprofit corporations. Affiliates of the Petitioner, all "wholly owned" subsidiaries of The Southern Baptist Convention and all religious nonprofit corporations, are: Foreign Mission Board of the Southern Baptist Convention, Home Mission Board of the Southern Baptist Convention, The Sunday School Board of the Southern Baptist Convention, Annuity Board of the Southern Baptist Convention, The Southern Baptist Theological Seminary, The Southwestern Baptist Theological Seminary, Golden Gate Baptist Theological Seminary, The Southeastern Baptist Theological Seminary, Midwestern Baptist Theological Seminary, Southern Baptist Foundation, The Southern Baptist Commission on the American Baptist Theological Seminary, Brotherhood Commission of the Southern Baptist Convention, The Radio and Television Commission of the Southern Baptist Convention, Historical Commission of the Southern Baptist Convention, The Christian Life Commission of the Southern Baptist Convention, Education Commission of the Southern Baptist Convention, The Stewardship Commission of the Southern Baptist Convention, and Executive Committee of the Southern Baptist Convention.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

New Orleans Baptist Theological Seminary prays that a writ of certiorari issue to review the judgment of the Court of Appeal of Louisiana, Fourth Circuit, entered in the above entitled case on November 16, 1989.

OPINIONS BELOW

The final opinions of the Civil District Court, Parish of Orleans, are unreported and are printed in Appendix, pp. A-32, A-38. The judgment of the Court of Appeal of Louisiana, Fourth Circuit, is reported at 554 So.2d. 90, and is printed in Appendix, p. A-1.

JURISDICTION

The judgment of the Court of Appeal of Louisiana, Fourth Circuit was made and entered on November 16, 1989. (app., p. A-1) A timely petition for rehearing was denied on January 17, 1990. (app., p. A-48) A timely application for writ of certiorari filed in the Supreme Court, State of Louisiana, was denied by an order entered March 30, 1990. (app., p. A-25)

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257. Petitioner asserts that a final judgment of the highest court of Louisiana in which a judgment could be had deprives petitioner of its rights, priviliges, and immunities provided under the first and fourteenth amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The first amendment to the Constitution of the United States reads, in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

The fourteenth amendment to the Constitution of the United States reads, in relevant part:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Louisiana Court of Appeal, Fourth Circuit, has upheld a Civil District Court injunction compelling New Orleans Baptist Theological Seminary ("the Seminary") to grant a ministerial degree to Rudolph G. Babcock. (app., p. A-38)

The Seminary faculty had voted May 5, 1989, according to its ecclesiastical authority and the academic procedures of the Seminary, that Mr. Babcock was spiritually unfit for Christian ministry and, therefore, ineligible to receive the Seminary's degree. The Bulletin of the Seminary states:

> In order to graduate from the seminary a student must meet all academic requirements set forth in the Bulletin, settle all financial obligations to the seminary, and maintain high standards of moral and ethical conduct. If, in the opinion of the appropriate faculty committee, any student proves unfit for spiritual, moral, mental, or other reasons either to continue his studies or to receive a degree, the seminary reserves the right to dismiss him at any time and **or to withhold a degree he otherwise has earned**. The decision of the committee may be appealed to the President. (emphasis added)

Mr. Babcock did not appeal this faculty decision to the President. Rather, he filed suit in the Civil District Court, the Parish of Orleans, seeking an injunction to compel the Seminary to grant the degree. The Seminary filed an exception to Mr. Babcock's petition insisting that the first and fourteenth amendments to the United States Constitution denied the court subject matter jurisdiction. (app., p. A-62)

The District Court granted a temporary restraining order compelling the Seminary to grant the degree (app., p. A-36), and on May 19, 1989, the District Court entered a judgment

which granted Mr. Babcock an injunction compelling the issuance of the degree. (app., p. A-38).

The Seminary secured a stay from the Louisiana Court of Appeal, Fourth Circuit, and appealed. The Court of Appeal consolidated this appeal (89-CA-1248) with an appeal already pending in that court (89-CA-0233). (app., p.A-46)

In order to understand the background of this case it is necessary to understand the related, earlier case, although it is now moot. The first case arose after the Seminary expelled Mr. Babcock on August 4, 1987. The expulsion occurred when a Seminary adjudicatory body found, after a hearing, that Mr. Babcock had, while on probation, violated the terms of his probation by: continued physical and verbal abuse of his wife; an occurrence of other marital and family life difficulties; and a separation from his wife. Mr. Babcock was at that time a candidate for a Master of Divinity degree in marriage and family counseling.

Mr. Babcock filed this first suit against the Seminary in the same District Court in August, 1987. He alleged that his expulsion was wrongful because the Seminary had not followed its own procedures in the expulsion and had acted arbitrarily in finding that he was separated from his wife. Mr. Babcock averred that the Seminary had thus "breached its contract" with him.

Mr. Babcock did not appeal the expulsion ruling to the Seminary President as the procedures permitted. Instead, he asked the District Court to overrule the Seminary's disciplinary decision to expel. He sought an injunction compelling the Seminary to readmit him against the Seminary's will, to continue to train him for Christian ministry at the expense of the denomination, and to forbid the Seminary from withdrawing its special financial assistance grant to him. On August 20, 1987, the District Court issued a temporary

restraining order granting Mr. Babcock this relief (app., p. A-26) and the Seminary was forced to readmit Mr. Babcock and to continue to train him for ministry.

The Seminary filed an exception to the petition in this first suit insisting that the first and fourteenth amendments of the United States Constitution denied the court subject matter jurisdiction and that Babcock's suit should be dismissed. (app., p.A-49) After an evidentiary hearing on the exception only, the District Court assumed jurisdiction, denying the Seminary's exception, and renewed the TRO successively every ten days. (app., p.A-29)

The Seminary believed that submitting its spiritual decision to the review of a secular court would chill the Seminary's constitutional rights. Accordingly, the Seminary obeyed the court's order but declined to go to trial on the merits of Mr. Babcock's application for injunction. Instead the Seminary relied on its constitutional rights and agreed to the entry of a final decree in Mr. Babcock's favor subject to the Seminary's right to appeal the first amendment issue of subject matter jurisdiction. (app., p.A-32)

Thus the Seminary raised in the District Court at the earliest opportunity the federal question of whether the first amendment to the U. S. Constitution deprived the court of subject matter jurisdiction. The Seminary continued to raise this same issue at every opportunity and at each step of the proceedings in both the first and second cases.

During the appeal of this first case, the Seminary was constrained by the District Court to let Mr. Babcock continue and, ultimately, complete his course work at the Seminary. Mr. Babcock's completion of his course of study at the Seminary rendered the first case moot. But when the Seminary's faculty reviewed all of the candidates for degrees in May, 1989, it voted that Mr. Babcock was unfit for ministry

and thus ineligible to receive the Seminary's Master of Divinity degree. When notified of this decision, Mr. Babcock filed the second suit on May 9, 1989.

The Court of Appeal held in favor of Mr. Babcock, finding that the District Court did have jurisdiction over the subject matter of both actions. (app., p.A-15) The judgments of the trial court in both cases were affirmed. Applications for a rehearing and for a writ of certiorari to the Louisiana Supreme Court were denied.

The Southern Baptist Convention (the "Convention") is a protestant Christian denomination composed of some fourteen million persons and thirty-seven thousand churches. The Seminary is one of six regional seminaries in which the Southern Baptist Convention trains its ministers.

The Seminaries are governed by the Convention. The Convention exercises legal, financial, and theological control over its seminaries. While the Seminary is a Louisiana religious nonprofit corporation, its charter provides that its corporate directors (called "trustees") are chosen by the Convention. These trustees have the authority, by virtue of Louisiana law and the ecclesiastical authority vested in them, to manage the affairs of the Seminary, choose the President, select faculty, and establish rules and procedures.

The Seminary trustees have established rules for admission to the Seminary and for continued matriculation and ultimate graduation. The Seminary's rules and polices are based on sincerely-held religious beliefs. They reflect the Seminary's and its parent denomination's understanding of Holy Scripture. The administration of these rules and polices is conducted prayerfully and subject to the leadership of the Holy Spirit.

The Seminary has religious convictions concerning conduct appropriate for those called of God to Christian

ministry. Those convictions include standards for marital relationships, spirituality, and morality.

The education and training of seminarians is largely at the expense of the denomination. The Seminary does not participate in any federal or state funded loan or grant program. A seminarian pays only minor fees, and even these are often offset (as in Mr. Babcock's case) by additional financial assistance provided by the Seminary.

The Seminary admits only those who, like Mr. Babcock, represent to the Seminary that they have been called of God to ministry, and who are vouched for by their church. Once admitted, the student lives in a "community of faith." A student is allowed to continue to matriculate and to graduate only upon a continued finding by the Seminary's administration and faculty that the student is fit for ministry.

Mr. Babcock was admitted by the Seminary in August, 1985, as a candidate for the master of divinity degree. He had previously been licensed to preach the gospel by his local church, but that church was not a member of nor a participant in the Southern Baptist Convention. A degree from the Seminary would be Mr. Babcock's "seal of approval" from the Southern Baptist Convention and his "certification" to Southern Baptist churches.

REASONS FOR GRANTING WRIT OF CERTIORARI

At best, the opinion of the court below indicates a lack of understanding of this Court's prior rulings. At worst, the opinion represents a dangerous departure of Louisiana jurisprudence from the law of the land. As a result, the state court has eviscerated the Seminary's and its parent denomination's rights:

--to choose whom they deem spiritually fit for ministry in

Southern Baptist churches and organizations; and
--to evaluate candidates for divinity and ministerial degrees by whatever ecclesiastical method they select and for whatever reasons they choose without being subject to judicial review and reversal.

This decision, which the Louisiana Supreme Court has refused to review, establishes law for the State of Louisiana which is at odds with the decisions of the courts of other states, the courts of the various federal circuits, and this Court. It represents a serious threat to the right of every religious body to be free from government intervention in certifying ministers, priests, rabbis, or others who would teach its religious faith.

Permitting a state court to grant a seminary divinity degree over the objection of the ecclesiastical authorities of the seminary is a serious aberration from this Court's application of the first amendment.

The opinion of the court below puts Louisiana jurisprudence on a collision course with this Court's decisions on the free exercise of religion. It is nearly unthinkable that a state court would undertake to award a litigant a Masters of Divinity degree in the name of a Southern Baptist seminary, when the ecclesiastical authorities of the seminary have found the litigant spiritually unfit for the degree. To permit such an action to stand would inextricably entangle government in the affairs of churches and have dire consequences for every religious body in America.

To Southern Baptist churches a diploma from the Seminary represents a certificate of moral and spiritual fitness as well as academic achievement. The Seminary cannot and will not grant the degree to one it finds lacking the spiritual and theological fitness to be a minister to Southern Baptist

churches.

The Court of Appeal has stepped into the shoes of the Southern Baptist Convention's seminary and awarded Mr. Babcock this Southern Baptist seal of approval (or fitness) to minister. If the Seminary is forced to grant this degree, it would cause an ongoing future interference by the court in the affairs of the Southern Baptist denomination. For an indeterminate number of years, Mr. Babcock would be able to represent himself as having been approved for the ministry by the Southern Baptist Convention and the Seminary, when in fact his certificate of approval would be granted to him by the Louisiana state courts. The Seminary has expressly found Mr. Babcock not to be fit for ministry. Yet Louisiana's decision, not the Seminary's, will be the decision which affects other Southern Baptists who may have occasion to deal ministerially with Mr. Babcock. This potential entanglement of the state in the spiritual realm of the church is an intolerable violation of the first amendment rights of the Seminary, of the Southern Baptist Convention, and of every one of the fourteen million Southern Baptists in this country.

What criteria does Louisiana use to determine fitness for Southern Baptist ministry? Is it different from the state's criteria for fitness for priesthood in the Catholic church, or the state's criteria for rabbinical fitness for Orthodox Jews? Or does the state have a generic standard of fitness, an unmarked brown bag, in which is found a fitness standard for all religious groups, thus being "objective" and "nondiscriminatory?"

This unconscionable result reached by the Louisiana courts is the product of several errors in applying constitutional law. These errors are set out and discussed below.

1. The court's holding that the Seminary was not a religious institution entitled to first amendment protections was

erroneous and places Louisiana in direct conflict with the Fifth Circuit Court of Appeals' decision on the same issue.

The Court of Appeal held that the Seminary was acting in a secular role as "a school" in its dealings with Mr. Babcock rather than as a constitutionally protected religious institution (or, in the court's shorthand, "a church"). (app., p. A-14). The court's failure to provide first amendment protection to the Seminary, which functions as do all the Convention's seminaries, places Louisiana in direct conflict with the United States Fifth Circuit Court of Appeals.

One of the Seminary's five sister seminaries, Southwestern Baptist Theological Seminary, has been adjudicated to be "the church" by the United States Fifth Circuit Court of Appeals. *E.E.O.C v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1977). The issue in *Southwestern* was whether the application of the Civil Rights Act of 1964 to employment at Southwestern violated the first amendment. The court first noted that the first amendment will not permit state interference with relationships between a church and its ministers. The court then addressed the question of whether Southwestern was "church." It concluded:

> Clearly, [Southwestern] Seminary is an integral part of a church, essential to the paramount function of training ministers who will continue the faith .... Its purpose is to indoctrinate those who already believe, who have received a divine call, and who have expressed an intent to enter full-time ministry. The local congregation that regularly meets in a house of worship is not the only entity covered by our use of the word "church" .... Since the Seminary is principally supported and wholly controlled by the Convention for the avowed purpose of training ministers to serve the Baptist

> denomination, it too is entitled to the status of "church."

Id., 651 F.2d at 282-283.

The Seminary is identical to Southwestern Baptist Theological Seminary in all relevant respects, including its organization, purpose, and relationship to the Southern Baptist Convention.

The Eleventh Circuit Court of Appeals has ruled the Southern Baptist Convention to be a "church" entitled to first amendment protection. *Crowder v. Southern Baptist Convention*, 637 F. Supp. 478 (N.D. Ga. 1986), *aff'd.*, 828 F.2d 718 (11th Cir. 1987), *cert. denied* 484 U.S. 1066 (1988). The Seminary is a most important arm of this church: it is the primary institution which trains the church's ministers. This crucial responsibility preserves the Southern Baptist faith and permits it to be passed on from generation to generation in an untainted, unadulterated form.

This Court should grant a writ of certiorari in this case to resolve the conflict between Louisiana and the Fifth Circuit Court of Appeals as to whether seminaries of the same type as the Southern Baptist Conventions's seminaries are entitled to the constitutional protection of the first amendment.

2. The Seminary's decision that Mr. Babcock was unfit for Christian ministry was an ecclesiastical decision.

The Louisiana Court of Appeal said, assuming *arguendo* that the Seminary was "the church," the Seminary was entitled to first amendment protection "...only if the controversy between the Seminary and Mr. Babcock interfered with the relationship between a church and one of its ministers or if the dispute involves a matter purely of ecclesiastical concern." (app., p.A-12)

Just as the Court of Appeal could not envision a "school" enjoying first amendment protection, the court could not conceive that a "student" who was both a minister and a ministerial student could be a "minister" for first amendment analysis. The court then erroneously held that it was not adjudicating a dispute between a religious order and its minister.

The court also held, "Nor is the dispute between the Seminary and Mr. Babcock purely a theological or ecclesiastical matter. Mr. Babcock's petition does not require interpretation or evaluation of ecclesiastical doctrine or practice, and resolution of the dispute likewise required no reference to religious doctrine and practice." (app., p.A-13)

The Court of Appeal's action flies in the face of decisions of this Court concerning what matters are ecclesiastical in nature, and the deference which courts must show to the church when the church is training or disciplining its ministers.

Although Mr. Babcock was already a licensed minister when he came to the Seminary, his purpose in coming to the Seminary was to prepare for the ministry and to receive the Seminary's degree. If not for Mr. Babcock's representations to the Seminary authorities that he was called of God to ministry, he would not have been eligible for admission. His application indicated his intention to continue to be a minister.

As an integral part of "the Southern Baptist church," the Seminary has an attendant Constitutional right to fulfill its role of training ministers free from government regulation and interference. This Court has repeatedly turned back state intrusion into such ecclesiastical affairs of the church, holding that the same constitutional provisions which prevent the legislature from interfering with the church's free exercise of its religion prevented the judiciary from interfering as well.

Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190 (1960).

In *Everson v. Board of Educ.*, 330 U.S. 1, (1947), Justice Black summarized the scope of the separation principle, which provides the foundation for the rules governing civil jurisdiction over church disputes:

> The ... First Amendment means at least this: ... Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*.

Id., 330 U.S. at 14-15.

When the church is engaged in the training of its future ministers it is at the "epicenter" of the purely religious life of the church. See Bagni, *Discrimination in the Name of the Lord: A Critical Evaluation of Discrimination by Religious Organizations*, 79 Colum. L. Rev. 1514, 1539 (1979).

> The right to choose ministers without government restriction underlies the well-being of the religious community, for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines ....

Rayburn v. General Congress of Seventh Day Adventists, 772 F.2d 1164, 1168 (4th Cir. 1985), *quoting Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *see also Maguire v. Marquette Univ.*, 627 F. Supp. 1499 (E.D. Wis. 1986) In *Maguire* the court recognized it lacked jurisdiction to review the University's decision not to employ the plaintiff as a professor of theology because her beliefs did not conform to Catholic theology on abortion. In *Rayburn* the first amendment prevented application of Title VII protection to an

associate in pastoral care in the Seventh Day Adventist church.

In *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), *cert. denied* 409 U.S. 896 (1972), the Fifth Circuit observed, "The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." *Id.*, 460 F.2d at 559.

The Court of Appeal was far outside its permissible bounds when it stated, "Nor is the dispute between the Seminary and Mr. Babcock purely a theological or ecclesiastical matter." This statement is incredulous. The dispute is whether by Southern Baptists standards of morality, doctrine, and practice, Mr. Babcock is morally and spiritually fit for ministry in Southern Baptist churches. The Court of Appeal cannot undertake to state what is and what is not Southern Baptist doctrine and practice. That is the exclusive domain of the church, not the court. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664 (1970).

Mr. Babcock has argued in his brief below that the Seminary does not believe that divorce and separation are morally wrong or contrary to religious doctrine. By this argument Mr. Babcock reveals the real nature of the dispute: he and the Seminary do not share the same doctrinal convictions on the subject of morality and spirituality. Mr. Babcock would call in the forces of the state to side with him in this controversy over doctrine.

If the Louisiana court's decision is permitted to stand, the Seminary would be forced to abandon reliance upon its understanding of the "call" of the Holy Spirit to ministry and the teachings of the scriptures as the "sole authority for faith and practice" on the subject of marital relationships. Future

decisions by the Seminary on matters of faith and practice would be burdened with the fear that a civil court might not agree with the Seminary on matters which lie at the core of the Seminary's faith. The Constitution does not permit the state to place such a burden on the Seminary and the church's religious beliefs. *Wisconsin v. Yoder*, 406 U.S. 205, 222-229, 235-36 (1972).

The Constitution mandates that the State of Louisiana not interfere with the Southern Baptist Convention as it establishes a Seminary, ordains the ecclesiastical order to be observed, enunciates the theology and the scriptural authority for doctrine, and determines with the guidance of the Holy Spirit those who have received a call from God to the ministry. Neither can the state step in where the Southern Baptist Convention has established a procedure and criteria by which the ongoing spiritual fitness for ministry of the Seminary's ministerial candidates will be determined - especially where the procedure makes use of the subjective but spirit-led and spiritually enhanced "opinion" of the Seminary.

3. The Louisiana Court of Appeal was constitutionally bound to defer to the decision of the highest ecclesiastical tribunal in which the Seminary/church has vested its decision making authority.

The Seminary's trustees, elected by the church to serve the church, have decreed the policies of the Seminary. The trustees have vested in the Seminary's officers and faculty the authority to manage the affairs of the Seminary under the supervision of the Board and have vested in the faculty the power to determine who has and who has not met the Seminary's spiritual and moral requirements for graduation subject only to appeal to the President.

There is no dispute but that those who made the

decision to expel Mr. Babcock for physical and verbal abuse of his wife, those who adjudicated his complaints about that decision, and those who voted not to graduate him, were the duly established adjudicatory groups within the ecclesiastical structure of the Southern Baptist Convention and the Seminary. The Seminary's action in expelling Mr. Babcock was the result of authoritative interpretations of church theology and rules. The Seminary has a mission which includes protection of Baptist beliefs. To these persons and to their decision the court must defer:

> ... [W]henever the questions of discipline, or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application of the case before them.

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871).

Fifty-eight years after *Watson*, this Court reconfirmed this position, holding as final a church's decision that the plaintiff minister was unfit to serve. The first amendment deprived the court of jurisdiction to review the church's conclusion on ministerial fitness:

> ... [T]he decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Gonzalez v. Archbishop, 280 U.S. 1 (1929) (emphasis added).

Mr. Babcock does not dispute the jurisdiction or authority of the Seminary officials to make the expulsion decision. Rather than avail himself of the "appellate procedure

within the church hierarchy (which) was his avenue for review" Mr. Babcock asks a civil court to declare the Seminary wrong and to substitute the court's interpretation of the Seminary's religious requirements for the Seminary's own understanding of its requirements. *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 494 (5th Cir. 1974).

4. The court below improperly applied an "arbitrariness" test when the court was constitutionally bound to accept the Seminary's determination that Mr. Babcock was not fit for ministry in the Southern Baptist denomination.

The Court of Appeal found the Seminary had acted in a "grossly unfair and arbitrary" manner and that the Seminary's refusal to grant the degree was "without sufficient explanation." (app., pp. A-18-19) The court held, "It was incumbent upon the Seminary to show by competent evidence that its decision [finding Mr. Babcock spiritually unfit] was reasonably based on facts that shows [*sic*] Mr. Babcock is unfit to receive a degree." (app., p.A-19). The Court found the Seminary's procedure for determining spiritual fitness and thus eligibility to receive a degree contained "due process infirmities" and that the Seminary's Bulletin "contains serious deficiencies such that its application in this case is arbitrary and unjust." (app., p.A-19)

With these words, the Louisiana Court of Appeal "overruled" *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Although the Court of Appeal cites *Serbian* as though to acknowledge its existence, the court ignores the plain language of *Serbian*:

> ... [N]o "arbitrariness" exception - in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulation - is consistent with the constitutional mandate that civil

> courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical policy on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church adjudicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits: recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of a civil court inquiry, and that a civil court must accept the ecclesiastical decision of church tribunals as it finds them.
>
> . . .
>
> Indeed, it is the essence of religious faith that ecclesiastical decisions ... are to be accepted ... whether or not rational or measured by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matter of ecclesiastical cognizance.

Id., 426 U.S at 713-715.

This Court in *Serbian* went out of its way to end any confusion created by lower court decisions following *Gonzalez, supra*, p. 16. Some post-*Gonzalez* decisions tried to recognize an "arbitrariness" exception to the rules against interfering with a religious body. The *Serbian* decision declared this body of law to be an erroneous understanding of *Gonzalez*.

"Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines and belief,"

this Court has declared. *United States v. Ballard*, 322 U.S. 78, 86 (1944). If the Seminary's views on "separation" are found unreasonable or if the Seminary's procedure for determining spiritual fitness is "arbitrary" as the Court of Appeal found, "the triers of fact . . . enter a forbidden domain." *Id.* "... [T]he claims ... alleging a 'violation of ecclesiastical due process' patently failed to state a claim .... [I]f there is an earthly forum for the adjudication of such allegations, it is not a federal court." *Kaufmann v. Sheehan*, 707 F.2d 355, 357 (8th Cir. 1983), quoting with approval the United States District Court decision below.

There is no basis for civil jurisdiction arising from Mr. Babcock's discipline at the hand of his ecclesiastical superiors. "The only exception to strict deference apparently left open by [*Serbian*] was 'marginal review' for fraud or collusion and the possibility of such review was not endorsed, but merely left for later consideration." Ellman, *Driven From the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 Cal. L. Rev. 1378, 1397 (1981). Mr. Babcock did not allege fraud or collusion.

The Seminary community, as a matter of faith, rejects rationalism, defined as "reliance on reason as the basis for establishment of religious truth." *Webster's Ninth New Collegiate Dictionary* (9th ed. 1983). When a religious body rejects reliance on reason, how can the secular world see the actions of that religious body as anything other than arbitrary, by definition? The Seminary exists in a spiritual vacuum of a faith which, its Bulletin declares, "is supernatural in its origin and history. We repudiate every theory of religion which denies the supernatural elements in our faith."

"... [R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit first

amendment protection." *Thomas v. Review Bd.*, 450 U.S. 707, 714 (1981). Religion does not have to be based on rationalism to be protected by the first amendment. That is why this Court will not permit the government to even ask the question, "Did the church act irrationally or arbitrarily in interpreting its doctrines and policies?"

When the Seminary's theological faculty determined Mr. Babcock's unfitness for ministry, it was not applying objective, rational standards but conducting a spiritual test. The measuring tools were a divining rod and spiritual sieve: the divining rod to know God's will, the sieve to test the candidate by a screen fashioned from the church's understanding of the Bible. The judges in this church forum were engaged in a holy task entrusted to them by ecclesiastic appointment. They held their council in the inner sanctum of the church. Their task was to identify those they deemed fit to recommend to the churches to perform the priestly function, to administer the Holy sacraments, to safeguard the ordinances of the church, to shepherd the flocks, to be moral preceptors, and to perpetuate the faith.

From this event, the Constitution bars the state. It does so, in part, in recognition of the spiritual agreement of the religious novitiate to be subject to his ecclesiastical superiors in matters concerning his priestly calling. The Southern Baptist church deems the Seminary's decision the discharge of a sacred trust performed by human judgments informed by God.

The Courts of Louisiana have decreed the Seminary's procedures unfair by the State's notion of due process. Southern Baptists have selected those who made the Seminary's rules for a spiritual community into which only those who submit to its spiritual discipline may enter. May civil judges apply notions the State may have about fairness to

religious controversies and overrule hierarchical authorities of the church in spiritual decisions? No.

The Louisiana court undertook to interpret Southern Baptist church law and custom in another way. The court said, only the local church and not the Seminary may ordain Southern Baptist ministers. Therefore, the court ruled, the Seminary was not engaged in any spiritual exercise when it found Mr. Babcock unfit for Christian ministry and ineligible to hold a degree from the Seminary. It is not for the court to decide what is Southern Baptist church law and custom regarding the distinctions between an ordained minister with a divinity degree from a Southern Baptist seminary and an ordained minister without such a degree.

The courts of Louisiana may not instruct the church on church law and custom, nor on the adequacy of church procedures for determining spiritual fitness, nor on the church's ecclesiastical authorities' compliance with these procedures. The State may not compel the church to certify as spiritually and morally fit one whom the church's appointed authorities have determined is spiritually and morally unfit. The State of Louisiana may not compel the church to declare spiritually clean what the church finds spiritually unclean.

The "Baptist minister fitness label" may not be pinned to the clerical cloth by decree of a state court. The determination of those deemed eligible for priesthood lies at the very core of every religion. The notion of apostolic succession, of laying on of hands, of the anointment of the Holy Spirit, are all sincerely held religious beliefs placed by the Constitution beyond the pale of civil authority.

The whole spiritual program of the Seminary comes, in the end, to focus on the determination by the faculty, communicated to the trustees, that the institution has trained and examined seminarians and found them to be fit to serve

the churches. What possible state interest is served by this decision? Does the state have an interest in saving Southern Baptists from making a mistake in its system of certifying spiritual fitness? The claim is that the state has an interest in the enforcement of contracts. Here the contract is between one who entered into a program of training and evaluation knowing in the beginning that a condition of his receipt of a degree was a subjective spiritual finding by the Seminary's authorities, not by state authorities, that he was fit. Mr. Babcock did not appeal the faculty decision to the President, as his "contract" with this spiritual community entitled him. He fled to the courts of the State of Louisiana, but the courts of that realm lack jurisdiction.

5. The Court of Appeal failed to recognize that a contract dispute may have theological implications which can deprive the court of jurisdiction.

The Court of Appeal made much of the fact that the Seminary had a "type of contractual relationship" with Mr. Babcock. (app., p.A-15). Part of this contract, said the court, included the Seminary's policies on divorce and separation. The Court of Appeal said, "Quite simply, by outlining its divorce/separation policy and by describing its due process procedures in the handbook, the Seminary has taken the issue of a student's dismissal out of the arena of a religious controversy and into the realm of contract dispute." (app., p. A-14).

The Seminary did not contract away its constitutional rights when it admitted Mr. Babcock as a student. It never promised him to interpret scriptures on marriage as he thinks it should. Nor has the Seminary promised him that it would act in a way which he or a civil court would deem non-arbitrary. The Seminary never promised that he would be

entitled to substitute his judgment or that of a court for the Seminary's judgment that he was not fit to minister.

Courts cannot resolve contract disputes which require inquiry into theological interpretation by a church. The presence of contract rights is no magic elixir which evaporates the Seminary's constitutional free exercise rights or which makes permissible the intrusion of state courts into an internal controversy within the spiritual community of the Seminary.

The lower court's simplistic conclusion that since a contract was involved the court had jurisdiction is contrary to this Court's decisions and to the decision of the various circuits. The First Circuit Court of Appeals declared last year:

> However a lawsuit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the first amendment ... is implicated .... [M]atters touching this relationship must necessarily be recognized as of prime ecclesiastical concern. *McClure v. Salvation Army,* (*supra*, p. 14), 460 F.2d at 558-9. [Other citations omitted.]
>
> At bottom ... [the] complaint directly involves, and would require judicial intrusion into, rules, policies, and decisions which are unmistakably of ecclesiastical cognizance. They are, therefore, not the federal courts' concern.

Natal v. Christian & Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989). No matter what secular cause of action the Louisiana Court uses to label Mr. Babcock's grievance, the subject matter of his grievance is woven inextricably in the theological and ecclesiastical fabric of the Southern Baptist church.

Mr. Babcock argues that the Seminary violated its rules and thus breached his contract when it expelled him. In an

ecclesiastical controversy a church alone can interpret its rules and regulations, even if those form the basis of a contract. *Nunn v. Black*, 506 F. Supp. 444, 448 (W.D. Va. 1981); *Hill v. Sargent*, 615 S.W.2d 300 (Tex. Civ. App. 1981); *Hafner v. Lutheran Church-Missouri Synod*, 616 F. Supp. 735 (N.D. Ind. 1985); *Martin v. Lewis*, 688 S.W.2d 72 (Tenn. Ct. App. 1984); *Gibson v. Singleton*, 149 Ga. 502, 101 S.E. 178 (1919); *Kaufmann v. Sheehan, supra*, p. 19; *Dowd v. Society of St. Columbia*, 861 F.2d 761 (1st. Cir. 1988).

The Court of Appeal was constitutionally prohibited from ever reaching any contract issues in this case. The court erred in reasoning that, because Mr. Babcock's rights are in the nature of a contract, this case turns on contract law and not on constitutional law. That is akin to arguing that determining who had the right to use the cathedral in *Kreshik v. Saint Nicholas Cathedral, supra*, p. 13, turned on property law and that constitutional law had nothing to do with the issue. Because constitutional law makes Mr. Babcock's dispute one outside the jurisdiction of the court, secular contract or property law is never reached.

The Court of Appeal determined that it was free to take jurisdiction of this case in order to interpret Mr. Babcock's contract with the Seminary. If a court were to undertake to interpret his contract, it would be required to look to the entire contract, including the customs and practices and relationships of the parties, the church's expectations of ministers, and whether the church had properly interpreted the scriptual basis for its ideas of spirituality and morality. This would cause an impermissible intrusion on the governance, faith, and doctrine of the church.

The same contract argument which Mr. Babcock advances has been repeatedly advanced by other would-be

plaintiffs. The effort is to convince the court that the controversy is essentially contractual and can be tried by the court under so-called "neutral principles of law" without touching on theological issues and without invading the governance of the religious body. *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986), cert. denied, 479 U.S. 885 (1986).

Another example of these would-be "contract" cases is *Crowder v. Southern Baptist Convention, supra*, p. 11. In *Crowder*, the plaintiffs alleged that the president of the SBC had conducted an election in a manner contrary to the SBC's own rules. The plaintiffs insisted that their contracts (as "messengers" or members of the SBC) had been breached, and the court should require the SBC to conduct the election according to the SBC's own bylaws and procedural rules.

The district court dismissed the suit for lack of jurisdiction. The Eleventh Circuit Court of Appeals affirmed, and this Court refused to grant certiorari.

The *Crowder* court recognized that it lacked jurisdiction to evaluate the rules of the Southern Baptist Convention:

> [W]here religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, "the Constitution requires that civil courts accept their decisions as binding upon them."

Id., 838 F.2d at 724, quoting *Serbian*, 426 U.S. at 725.

In *Crowder* all the court had to do was interpret *Robert's Rules of Order*, to ascertain if nominations from the floor were in order - hardly as spiritual a task as interpreting the Seminary's spirituality and morality criteria.

The Court of Appeal failed to recognize that "neutral principles of law" merely describe how a court is to resolve a dispute once it has determined that it has jurisdiction, and do

not provide a means by which to assume jurisdiction. *Jones v. Wolf*, 443 U.S. 595, 603 (1979). A court cannot apply neutral principles of law to resolve a dispute unless the court has first determined that it properly has jurisdiction of the dispute without regard to "neutral principals of law."

The *Serbian* decision affirmatively determined that the availability of neutral principles for decision did not place an ecclesiastical controversy back within the jurisdiction of a civil tribunal. *Serbian*, 426 U.S. at 696.

Lawrence Tribe, in a leading treatise on constitutional law, points out the error of that approach:

> Writing for himself and five other members of the Court, Justice Brennan distinguished between (l) disputes over church property as such, and (2) religious disputes that only "incidentally" affect church property, or other secular matters. [citing *Serbian*, 426 U.S. at 709, 720-23] As to the first category - property disputes "as such" - civil courts have a duty to adjudicate them in neutral terms if at all, without resolving underlying religious issues.... But as to the second category - disputes over religious doctrine, administration, or organization - a civil court can discharge its duty in only one way: by accepting the decisions of the proper church authorities "as it finds them," [citing *Serbian*, 426 U.S. at 713] whatever might be the "incidental effect" on property or other secular matters. [Citing *Serbian*, 426 U.S. at 720] In other words, *Serbian Orthodox Diocese* settled a question left open by the court's prior decisions: whatever room the first amendment might leave for independent civil resolution of secular but church-related disputes through neutral principles of law, it leaves no room whatever for independent civil adjudication of "questions ... at the core of ecclesiastical concern." [Citing *Serbian*, 426 U.S. at 717]

> It is noteworthy that the Court in *Serbian Orthodox Diocese* included, in its enumeration of questions so quintessentially religious as to oust civil jurisdiction altogether, not only matters of religious doctrine and hierarchical composition, but also "questions of church discipline." [Citing *Serbian*, 426 U.S. at 717] Thus, the Supreme Court has said that it would be unconstitutional for state tribunals to question a church's suspension or expulsion of a member for defying the church's hierarchy and challenging the church's authority through civil litigation. [Citing *Serbian*, 426 U.S. at 718]

L. Tribe, *American Constitutional Law* 1241 (2d ed. 1988) (emphasis added).

As in *Serbian*, the dispute between Mr. Babcock and the Seminary is inseparably tied to doctrinal "questions at the core of ecclesiastical concern."

6. Mr. Babcock waived his rights to civil redress of ecclesiastical disputes with the Seminary.

The Court of Appeal erroneously held that the Seminary gave up its first amendment protections by entering into a "contract" with Mr. Babcock. On the contrary, it is Mr. Babcock who gave up his rights in the case at bar. By enrolling in a church institution, by entering the cloister, Mr. Babcock gave up his right to judicial review of church decisions. Mr. Babcock chose to enter a spiritual domain where the state has no right to intrude, even to enforce a contract.

Part of the underlying constitutional theory which requires the civil powers to defer to religious authority in matters such as this dispute involves the contracting away by

Mr. Babcock of his right to judicial redress. Mr. Babcock and the Seminary have agreed that the evaluation (and continuation) of their relationship, will be made in the spiritual rather than the civil arena. When the court gives deference to the spiritual decision maker (the Seminary), it enforces rather than ignores Mr. Babcock's contract. *Minker v. Baltimore Annual Conference of the United Methodist Church*, 699 F. Supp. 954 (D.D.C. 1988).

When Mr. Babcock applied to be trained for the ministry by the Southern Baptist Convention through the Seminary, he entered what the church calls a "community of faith." Mr. Babcock represented to the Seminary that he had received a call from God to the ministry of Jesus Christ.

His admittance was conditional. It was probationary. Mr. Babcock was in his "novitiate" during which he was subject to the spiritual evaluation of his ecclesiastical superiors designated by the Convention to evaluate his fitness for that church's ministry. The terms under which he would be allowed to matriculate and to receive a degree were precisely declared from the beginning. He does not claim to have been ignorant of the right of the Seminary to evaluate him and to dismiss him or deny him a degree if he was found to be spiritually unfit. His case is that he disagrees with the church's finding that he was unfit; he thinks the church was arbitrary.

The terms of Mr. Babcock's probation, his "novitiate," his right to continue to be trained, his right to ultimately receive his certification by way of the diploma, were declared in the Bulletin under which he entered the Seminary and under which he pursued his degree. First, if at any point he was deemed by those designated by the Seminary to be unfit for ministry he would be dismissed. Second, if he completed his course work and was otherwise eligible for a degree, he would not receive the degree unless he was then deemed fit for

ministry.

7. The Court of Appeal erred in effectively finding that the Seminary had waived its first amendment rights.

The Court of Appeal found that it was inconsistent for the Seminary to enjoy first amendment protection and have rules for discipline. (app., p.A-14) Somehow, the court found, the Seminary waived its constitutional right to be the exclusive interpreter of its rules by adopting rules which, in part, satisfied requirements of its accrediting agency.

The Seminary did not waive its first amendment rights of religious autonomy by being accredited, as the Court of Appeal apparently believed. (app., p. A-15) The Court of Appeal failed to recognize first that the Seminary's rules make clear that the Seminary, not a civil court, and not an accrediting agency, will subjectively evaluate a student's fitness and that it will do so by spiritual standards of morality.

Second, the suggested waiver in the Court of Appeal decision is not supported in law. There can be no implied waiver of fundamental constitutional rights. "In the civil context as well as in the criminal, waivers of constitutional rights must be intentional and intelligent, knowing, express, and unambiguous." Laycock, *Academic Freedom and the Free Exercise of Religion*, 66 Tex. L. Rev. 1455, 1472 (1988) citing *Fuentes v. Shevin*, 407 U.S. 67, 94 n. 31 (1972), *Edelman v. Jordan*, 415 U.S. 651, 673 (1974), and other cases. There is simply no case law which supports the Court of Appeal's finding that the Seminary, by having rules of conduct, gave up its right to exclusively interpret and enforce them according to the spiritual light as seen by its officials.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 22, 1990.

APPENDIX

RUDOLPH G. BABCOCK

VERSUS

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

NO. 89-CA-0233 c/w 89-CA-1248

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

AN APPEAL FROM THE CIVIL DISTRICT COURT, THE PARISH OF ORLEANS NO. 87-15087 and 89-10425, DIVISION "B", HONORABLE ROBERT A. KATZ

* * * * * * * * *

CHARLES R. WARD
JUDGE

* * * * * * * * *

(Court composed of Judges Philip C. Ciaccio, Charles R. Ward and Joan Bernard Armstrong)

CIACCIO J. DISSENTING WITH REASONS

A. Morgan Brian, Jr.
New Orleans, Louisiana

and

James P. Guenther
Guenther & Jordan
Nashville, Tennessee

Court of Appeal
Fourth Circuit
Filed Nov. 16, 1989
Danielle Schott
Clerk of Court

and

Richard T. Simmons
New Orleans, Louisiana
Attorneys for New Orleans Baptist Theological Seminary

Ellis B. Murov
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AFFIRMED

New Orleans Baptist Theological Seminary instituted two separate appeals from district court judgments in a suit brought against the Seminary by Rudolph Babcock, a former student at the Seminary. We have consolidated these appeals for review.

In 89-CA-0233, the Seminary appeals a District Court judgment overruling its declinatory exception of lack of subject-matter jurisdiction. Babcock, then a student at the Seminary, sued for injunctive relief to prevent the Seminary from dismissing him. Babcock's suit is based on a contract alleged to exist between him and the Seminary by virtue of the terms of the student handbook. The Seminary excepted to the District Court's subject-matter jurisdiction based on the separation of church and state principle found in the First Amendment to the United States Constitution and comparable provisions in the Louisiana Constitution. At issue therefore is whether secular civil courts may inquire into a particular type of dispute between an institution whose primary objective is to train students for ministry and one of its students.

In 89-CA-1248, the Seminary appeals another judgment in which the District Court again denied the Seminary's exception of subject-matter jurisdiction which again was based on the principle of separation of church and state, and granted Babcock a preliminary injunction which would require the Seminary to graduate and confer a Master of Divinity degree upon him. This Court exercised its supervisory jurisdiction, staying execution of the District Court's preliminary injunction until resolution of the subject-matter jurisdiction issue. Nonetheless, this Court ordered the Seminary to allow Babcock to participate in graduation activities. The Seminary appeals the District Court judgment, stayed by this Court, granting Babcock the preliminary injunction which requires the Seminary to confer a degree.

The New Orleans Baptist Theological Seminary is a

corporation established, owned and operated by the Southern Baptist Convention to provide quality education in theology, religious education, and church music for graduate and undergraduate students. The Southern Baptist Convention provides most of the financial support for the Seminary, and Seminary students are not charged tuition, but they must pay a matriculation fee, housing costs, and other expenses each semester. The Seminary is accredited by the Southern Association of Colleges and Schools (S.A.C.S.).

To be eligible for admission to the Seminary, applicants must have been a christian for at least one year and provide both a "church statement" in which his church recommends and approves him as one worthy to pursue training at the Seminary and a "statement of conversion and call" in which the applicant may discuss his conversion to Christianity and/or his sense of divine call to minister as a Christian.

In August 1985 Babcock entered the Seminary to pursue a Master of Divinity degree in marriage and family counseling. After enrolling, and before completing his studies, Babcock was licensed as a minister by a Baptist church in Wisconsin which is not a member of the Southern Baptist Convention. Also, after enrollment Babcock and his wife experienced marital difficulties, and in July 1987, campus police were required to intervene in a violent marital dispute between the two.

On August 4, 1987, Babcock received a letter from Dr. Don Stewart, executive vice-president of the Seminary, stating, among other things, that the Student Affairs Committee met on July 31, 1987 and accused Babcock of separating from his wife and considering a divorce. By this letter, Babcock was informed he could not continue in his degree program and was instructed to leave the campus. This letter indicates that the Seminary sought to dismiss Babcock because of his alleged violation of its divorce policy which is set forth in the student

handbook:

> DIVORCE POLICY
>
> Students having marital difficulties during seminary days are encouraged to seek help through the free service provided by the seminary counseling center. Should separation and/or divorce occur, the student is required to withdraw from his/her degree program. Application for re-entrance may be made after reconciliation is accomplished or twelve months after the effective date of the divorce.

According to Dr. Stewart, the committee's action was final and, pursuant to "long-enforced" school policy, the possibility of Babcock's returning to the Seminary was virtually non-existent because his dismissal followed probation.

In his petition, Babcock asserted that he and his wife, Suzanne, had never separated nor divorced, that he was never on probation, and that, in dismissing him, the Seminary failed to follow its own established procedures set forth in the student handbook as "Due Process for Handling Conduct Situation":

> The seminary attempts to protect the rights and privileges of its students through due process in all disciplinary matters, but reserves the right to take disciplinary action against any student whose conduct is illegal or immoral or whose attendance at the seminary is against the best interests of the student or the seminary.
>
> The due process established for handling conduct

situations is not a duplication of legal criminal proceedings which are inappropriate to a seminary setting which has as its basic goals the education of the individual.

The following procedure is utilized in the handling of conduct situations.

1. HEARINGS

a. The student has an initial hearing with the Executive Vice President. At this initial hearing, the student is informed of all the details of the process. If conditions warrant, a written, signed complaint is given to the student for him to study.

b. In the event that a written, signed complaint is made, a second interview is held with the Executive Vice President, at which time the student may be accompanied by counsel from within the seminary community (faculty, staff, or student). The violation is discussed, and the student is given the opportunity to submit a written statement giving his explanation of the situation.

c. At the conclusion of the second interview, it is determined whether or not the circumstances of the case warrant the sending of the case to the Student Affairs Committee. The Committee will be the tribunal which judges such cases, with the exclusion of the Executive Vice President and any other committee member(s) who may be involved in the investigation of or presentation of the complaint

under consideration. Regardless of the outcome of the second interview, a brief continuity report of all know information pertaining to the case will be drawn up by the administrator handling the case. If the case does not warrant further action the continuity report will clearly state that no disciplinary action was taken. The student has the right to read the continuity report in its entirety.

d. If the circumstances in the case warrant sending it to the Student Affairs Committee, the chairman of the committee shall set a time and place for the hearing. The chairman shall notify the student(s) involved of the time and place at least 24 hours prior to the hearing. The student has the right to have present in the hearing those representatives and witnesses whom he desires. The hearing will be closed to the public and all information discussed or revealed will be held in strict confidence.

The Student Affairs Committee shall have access to the administrator's continuity report as well as the signed statement of the student. The student shall be given the opportunity to present evidence in his behalf during the hearing.

e. At the conclusion of the hearing, the Student Affairs Committee shall, in private, make a determination as to the disciplinary action to be taken. At any time during their deliberation, the committee may recall the student, the administrator, or any other person(s) they deem necessary in order to make their decision.

f. Upon reaching a decision, the committee chairman and the Executive Vice President shall meet with he student to inform him of the action to be taken and to discuss the provisions of the action.

2. APPEAL

a. The student may appeal the action of the Student Affairs Committee if he feels:

(1) he has received unjust treatment.
(2) all the facts in the situation were not considered.
(3) the action taken was too severe for the behavior involved.

b. Appeal must be made in writing to the President of the seminary within 48 hours of the action taken by the Student Affairs Committee.

c. Upon completion of his investigation, the President will either uphold the action previously taken or write a report making specific recommendations for consideration by the Student Affairs committee.

The Seminary acknowledges that this due process statement was placed in the handbook because of S.A.C.S. accreditation requirements.

On August 19, 1987, after alleging he was not afforded this due process procedure, Babcock obtained from the lower court a temporary restraining order enjoining the Seminary

from interfering with his right to register for fall semester classes. The TRO was successively renewed by the District Court every ten days. In the meantime, the Seminary filed its declinatory exception to the petition. After an evidentiary hearing only on the exception, the District Court denied the exception and held that the controversy was within its jurisdiction as a civil and secular matter because the issue in the case was controlled by contract principles rather than the First Amendment principle of separation of church and state.

Rather than go to trial on the merits of Babcock's application for preliminary and permanent injunction and his demand for specific performance of his contract rights as a student, the Seminary agreed by consent judgment of May 31, 1988 to the entry of a permanent injunction granting Babcock the relief he requested, i.e. to prohibit the Seminary from dismissing him based upon his conduct or activities on or before August 19, 1987, subject to the Seminary's right to appeal the First Amendment issue of subject-matter jurisdiction. In 89-CA-0233 the Seminary appeals only that portion of the District Court's judgment which overruled it exception to the court's subject-matter jurisdiction.

In the meantime, during the two years in which Babcock's suit and the Seminary's appeal in 89-CA-0233 were pending in the District Court and this Court, and the injunction prohibiting the Seminary from dismissing Babcock remained in effect, Babcock satisfactorily completed the coursework required to obtain a Master of Divinity degree. He therefore anticipated that he would graduate and obtain the degree at commencement exercises scheduled for May 20, 1989. On May 9, 1989, however, the Seminary notified Babcock that he would not graduate nor obtain his degree at the May graduation. The decision, it was later revealed, was based on the faculty's enforcement of a provision of the school's

Bulletin. The Bulletin is a comprehensive publication describing, in detail, courses offered at the Seminary, various aspects of academic, student and religious life there, and other general information. The pertinent provision states:

> REQUIREMENTS FOR GRADUATION
>
> In order to graduate from the seminary a student must meet all academic requirements set forth in the Bulletin, settle all financial obligations to the seminary, and maintain high standards of moral and ethical conduct. If, in the opinion of the appropriate faculty committee any student proves unfit for spiritual, moral, mental, or other reasons either to continue his studies or to receive a degree, the seminary reserves the right to dismiss him at any time and/or to withhold a degree he otherwise has earned. The decision of the committee may be appealed to the President.

The Seminary claims that although pursuant to the consent judgment of May 31, 1988, it was prohibited from dismissing Babcock for his alleged violation of the school's separation/divorce policy, its "agreement" to continue to allow Babcock to matriculate at the school did not require it to graduate him or to award a degree to him when the faculty committee deems him unfit for spiritual, moral or any other reason.

For the following reasons, in 89-CA-0233, we affirm the District Court's judgment on the jurisdictional issue. And because the Seminary has declined to contest the merits of Babcock's petition, the judgment issuing a permanent injunction restraining the Seminary from dismissing Babcock is

also affirmed. In 89-CA-1248 we vacate the stay issued by this Court and, deciding the case on the merits in the injunction issue, we affirm the District Court's grant of the injunction which requires the Seminary to award a degree to Babcock.

JURISDICTIONAL APPEAL (89-CA-0233)

The First Amendment to the United States Constitution and Article 1, Section 4 of the Louisiana Constitution both guarantee religious freedom and have been interpreted to forbid courts from interfering in the ecclesiastical matters of religious groups. Gorman v. Swaggart, 524 So.2d 915, 921 (La. App. 4th Cir. 1988) citing Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372 (1976) and Wilkerson v. Battiste, 393 So.2d 195 (La. App. 1st Cir. 1980). Although this prohibition covers matters of religious discipline, faith, rule or custom and the appointment or removal of ministers, it does not apply to instances where religious doctrine is not involved. Gorman, 524 So.2d at 922.

In search of First Amendment religious protection, the Seminary argues that it is a "church" rather than a "school." The Seminary vigorously argues its status as a Church was correctly decided in E.E.O.C. v. Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th Cir. 1981), when that Court held that the Southwestern Baptist Theological Seminary, a sister seminary to the New Orleans Baptist Seminary, was entitled to the status of a "church" because it "is principally supported and wholly controlled by the Convention for the avowed purpose of training ministers to serve the Baptist denomination." 651 F.2d at 283.

In the E.E.O.C. case, a Texas Seminary challenged an administrative subpoena for production of employment related records. Citing McClure v. Salvation Army, 410 F.2d 553 (5th Cir. 1972), the Court determined that First Amendment religious freedom and establishment principles did not require

disclosure in response to the subpoena of the employment relationship between a church (the Seminary) and its ministers. In determining which of the Seminary's employees were "ministers" whose employment data need not be disclosed, the Court held the faculty members and some of the upper administrative personnel were ministers, while support staff and other administrative personnel, some of whom were students and some of whom were ordained Baptist ministers, were not. Thus, the Seminary was required to provide the subpoenaed information for the latter group of employees.

In the E.E.O.C. the Court was not called upon to determine whether the Texas seminary was a church or a school. Had that been the issue, the Court may well have characterized the seminary differently. And, at any rate, the Seminary in the instant case has presented no persuasive arguments nor authority as to why an institution may not be considered as both a church and a school.

Moreover, we do not regard the characterization as determinative of the dispute at issue. Even if we consider the Seminary as a church, First Amendment principles are applicable only if the controversy between the Seminary and Babcock interferes with the relationship between a church and one of its ministers or if the dispute involves a matter purely of ecclesiastical concern.

The dispute between the Seminary and Babcock is not one in which Babcock is cast in the role of a minister of the Seminary. Babcock already is licensed to minister by a Baptist church not affiliated with the Convention. His license to minister is not dependent upon his role as a student at the Seminary. The licensing/ordination function is reserved exclusively to the local Baptist churches. The Seminary has no authority to grant or withdraw ministerial licenses nor to ordain or expel one as a minister. Hence, Babcock is not a

"minister" of the Seminary in the sense that some Seminary employees were held to be ministers in E.E.O.C., and the dispute between Babcock and the Seminary is not properly characterized as one between a church and one of its ministers. We conclude Babcock's status in relation to the Seminary is that of a student. Therefore, all of the jurisprudence referred to by the Seminary which established the lack of civil court jurisdiction over the expulsion of a minister from the ministry by a religious organization, is inapplicable.

Nor is the dispute between the Seminary and Babcock purely a theological or ecclesiastical matter. Babcock's petition does not require interpretation or evaluation of ecclesiastical doctrine or practice, and resolution of the dispute likewise requires no reference to religious doctrine and practice.

In LeBlanc v. Davis, 432 So.2d 239 (La. 1983), the Supreme Court held that the determination of 1) whether the proper procedure for dismissal of a pastor, according to the founding resolutions of a local church, was followed, 2) whether the pastor was properly dismissed from his pastoral duties and 3) whether the pastor's refusal to relinquish his pastoral duties warranted injunctive relief, were all matters subject to secular, civil jurisdiction and not matters that concerned interpretation or evaluation of ecclesiastical doctrine or practice that are solely within the province of the Church. See also, Rose Hill Baptist Church v. Jones, 425 So.2d 195 (La. App. 1st Cir. 1980). Similarly, in Bourgeois v. Landrum, 396 So.2d 1275 (La. 1981), the Supreme Court held that the determination of whether a voting member of a local church organized as a non-profit corporation may inspect the corporation's records did not entangle civil courts in question of religious doctrine, polity or practice. In Wilkerson v. Battiste, 393 So.2d 195 (La. App. 1st Cir. 1980), the Court of Appeal held that ecclesiastical matters were not at issue when

a court must determine whether church members conducted an election of the board of directors according to the procedures set forth in the church's charter.

In our opinion the facts of the instant case present a situation even more compelling than presented in the above cases, which leads us to conclude this is not an ecclesiastical matter. This case involves an institution which, although perhaps having characteristics of a church, necessarily functions as a school. Moreover, the dispute centers on the institution's role as a school, not a church. Clearly, the Seminary was trying to dismiss Babcock from the school, not from the ministry, for it has no power to do the latter.

The question raised by Babcock's petition is whether the Seminary followed its own due process guidelines in seeking to dismiss Babcock. This is not an inquiry into the validity of the Seminary's divorce/separation policy or the Southern Baptist denomination's stance on separation or divorce.

Quite simply, by outlining its divorce/separation policy and by describing its due process procedures in the handbook, the Seminary has taken the issue of a student's dismissal out of the arena of a religious controversy and into the realm of contract dispute. Overall, the presence or absence of due process attending the dismissal of Babcock for violation of a school policy has nothing to do with theological law, custom, or policy and therefore is not an ecclesiastical matter within the exclusive domain of religion.

Furthermore, even considering the Seminary as a wholly religious institution, those individuals who attend the Seminary are students who, like any other students, have rights and responsibilities which may, in certain instances, be subject to review by civil courts. One of these rights is the right students have to rely on statements made in the institution's publications. See, Tedeschi v. Wagner College, 404 N.E.2d

1302 (N.Y. 1980).

The due process procedure was placed in the handbook in response to the S.A.C.S.'s call for a clear definition of disciplinary procedures. (Trial transcript p. 93). For whatever reasons, for years the Seminary has sought and obtained accreditation from the S.A.C.S., a purely secular association. The Seminary cannot accept the benefits it necessarily derives from secular accreditation, purpose to adhere to the requirements for secular accreditation, and then claim that civil courts have no right to review whether it follows its own guidelines admittedly established for the purpose of obtaining secular accreditation.

Thus, the Trial Court did not err in holding that this dispute was more in the nature of a contractual dispute than an ecclesiastical one, and neither did the Trial Court err in holding that school publications given to students were part of the terms of a "contract" between a school and its students. Courts in other jurisdictions have indicated that the relationship between a student and a private educational institution may be considered contractual in nature and school publications may serve as evidence of the "contract". See, Lexington Theological Seminary v. Vance, 596 S.W. 2d 11 (Ky Ct. App. 1979); Tedeschi v. Wagner College, supra; Napolitano v. Princeton Univ. Trustees, 453 A.2d 279 (N.J. Super. Ch. 1982). Likewise, we believe Babcock and the Seminary were in a type of contractual relationship during his matriculation at the Seminary.

The District Court correctly overruled the Seminary's exception to the Court's subject-matter jurisdiction. Under the facts of this case and given the nature of the dispute between the Seminary and Babcock, First Amendment principles do not prohibit civil courts from assuming jurisdiction in this case.

INJUNCTION APPEAL (89-CA-1248)

The May 17, 1989 District Court judgment which the Seminary has appealed in 89-CA-1248, 1) overruled the Seminary's second and similar subject matter jurisdictional exception, 2) denied the Seminary's motion for dissolution of a temporary restraining order which was issued to compel the Seminary to award Babcock a degree at the May 20 graduation and denied the Seminary's request for wrongful-issuance damages, and 3) granted Babcock a preliminary injunction against the Seminary, forcing the Seminary to graduate and confer a degree upon Babcock. Following writ proceedings in which this Court stayed the preliminary injunction until disposition of the jurisdiction issue in the Seminary's first appeal, the Seminary appealed the May 17, 1989 judgment.

The Seminary argues, as it did in 89-CA-0233, that the principle of separation of church and state prohibits civil courts from assuming subject-matter jurisdiction of the instant dispute. For the same reasons we gave in 89-CA-0233 we find no merit in the Seminary's argument. Thus, in this appeal, as in 89-CA-0233, we find that the dispute between the Seminary and Babcock is neither one involving the relationship between a church and one of its ministers nor one of a purely ecclesiastical nature. For this reason we hold that civil secular courts have jurisdiction to decide the dispute.

Therefore, this Court's stay order issued in 89-C-0948 to stay the District Court's grant of a preliminary injunction until determination of the jurisdictional issue, is vacated.

Turning now to the merits of the dispute between Babcock and the Seminary, the Seminary contends that the District Court erred in granting a preliminary injunction, forcing it to graduate and award a degree to Babcock. We disagree.

The Seminary informed Babcock that he would not

receive his degree in a letter from the Seminary's attorney to Babcock's attorney dated May 9, 1987 which stated:

> This is to advise you that New Orleans Baptist Theological Seminary will not grant to Mr. Babcock a degree at the commencement scheduled for May 20.

Thus, the Seminary did not notify Babcock initially that it sought to enforce the "Requirements for Graduation" provision of the Bulletin. The Seminary first indicated it relied on the Bulletin in its writ application asking review of the injunction which would require the Seminary to confer a degree.

The "Requirements for Graduation" provision of the Seminary's Bulletin allows the Seminary to withhold a degree from a student if "in the opinion of the appropriate faculty committee any student proves unfit for spiritual, moral, mental or other reasons." According to the affidavit, submitted in lieu of testimony, of Dr. Landrum Leavell, president of the Seminary, the faculty voted on May 5, 1989 to withhold a degree from Babcock having found him unfit religiously and spiritually to receive a ministerial degree. According to Dr. Leavell, Babcock did not appeal the faculty decision to him; Babcock offers no proof to the contrary.

Babcock argues that no matter what provision the Seminary relies upon, the Seminary failed to show any conduct after August 19, 1987 that would justify withholding his degree. And, he contends that because the Seminary by virtue of the May 17 final "consent" judgment agreed not to dismiss him for his conduct prior to August 19, 1987, the Seminary cannot use that conduct as a reason to withhold the decree. There is nothing in the record to suggest that the faculty decision to withhold the degree was based on anything other than Babcock's conduct prior to August 19, 1987.

The Seminary counters with the argument that there is a

difference between dismissing Babcock and withholding a degree from him, and that it may withhold a degree for any reason, which would include conduct that occurred prior to August 19, 1987.

We disagree. There is no significant difference. If the Seminary cannot dismiss Babcock for conduct prior to August 19, 1987, it cannot withhold a degree because of that conduct. Moreover, we believe that when the Seminary acquiesced in the consent decree that permitted Babcock to continue as a student it was implied in that agreement that Babcock would receive a degree if he successfully met the academic requirements.

Jurisprudence indicates that in state schools, an academic decision of the faculty is set aside only if the decision is arbitrary, capricious or unreasonable. Regents of University of Michigan v. Ewing, 474 U.S. 214, 106 S.Ct. 507 (1985); Board of Curators of the University of Missouri v. Horawitz, 435 U.S. 78, 98 S.Ct. 948 (1978). Courts have been more willing to review the action of educational institutions when the decision in dispute relates to non-academic matters. And, even the disciplinary decisions of private schools are subject to judicial review at least for arbitrariness. See, Lexington Theological Seminary, supra; Tedeschi, supra; Coveney v. Pres. & Trus. of Holy Cross Col., 445 N.E.2d 136 (Mass. 1983). In this case, the Seminary's decision to withhold a degree from Babcock was unquestionably a non-academic determination. Indeed, the Seminary admits that he satisfactorily completed all course requirements necessary to receive his degree.

Following the consent final judgment the Seminary allowed Babcock to continue his studies toward his degree. Prior to May 9, 1988, he received notification of his impending graduation and received related correspondence on the subject of graduation festivities. It is grossly unfair and arbitrary to

allow a student to be lulled into thinking he would receive a degree upon satisfactory completion of his coursework, and then to refuse him the degree without sufficient explanation.

Nor do we believe that Babcock bore the burden of proving that the Seminary's decision was either arbitrary or that it was based on his conduct prior to August 19, 1987. It was incumbent upon the Seminary to show by competent evidence that their decision was reasonably based on facts that shows Babcock is unfit to receive a degree. At the very least, the Seminary should have articulated some specific reasons for its decision to withhold a degree from Babcock even if the reasons involve reference to "spiritual or religious" unfitness. Only then would an appeal to the president of the Seminary be meaningful.

We note also that the "Requirements for Graduation" does not provide for notice or a hearing during which a student would be able to respond to the faculty decision. These due process infirmities convince us that the provision in the Bulletin contains serious deficiencies such that its application in this case is arbitrary and unjust.

In sum, the Seminary's function of educating students and awarding degrees to students is, in fact, unrelated to the Convention's or the Southern Baptist denomination's role vis-a-vis its ministers. The Seminary has nothing to do with the licensing or ordination of local church ministers nor does it have any power to determine a student's fitness for ministry. The dispute at issue does not touch upon theological or ecclesiastical matters. Secular civil courts may assume jurisdiction to resolve this dispute which is essentially contractual in nature. The scope of review is to determine if the Seminary acted arbitrarily. By acquiescing in the consent decree which permitted Babcock to remain in school in spite of his conduct prior to August 1987, the Seminary acted

arbitrarily when it refused to confer a degree because of that conduct, or if it refused to confer a degree for other reasons without informing Babcock of these reasons.

We believe Babcock is entitled to receive his degree, and we find no error in the District Court's grant of a preliminary injunction.

Accordingly, the judgments in 89-CA-0233 and 89-CA-1248 are affirmed. All costs of these appeals are assessed to the Seminary.

AFFIRMED

RUDOLPH G. BABCOCK

VERSUS

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

NO. 89-CA-0233 C/W
NO. 89-CA-1248

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

Ciaccio, J., dissents with reasons

I respectfully dissent.

After acknowledging that the Seminary is a church, entitled as such to certain constitutional rights and protections, the majority opinion finds that these rights do not apply to this controversy, based upon the following reasoning.

1) The Seminary is a church but it is also a school.

2) Babcock is a student, not a minister of the Seminary - thus all jurisprudence governing the relationship of churches and their ministers is inapplicable.

3) This dispute is not an ecclesiastical matter between a church and a minister but a contractual dispute between a school and its student.

4) The school publications, including the school handbook, create a contract that is subject to judicial review.

5) By agreeing in the consent judgment not to dismiss Babcock for his earlier conduct, the Seminary lulled Babcock into thinking he would receive a degree upon completing his studies and it would be "grossly unfair and arbitrary"' to now refuse him his degree.

6) To deny Babcock a degree based upon a faculty finding of "spiritual or religious unfitness" without further articulation,

and without provisions for a hearing, except an appeal to the Seminary president, was arbitrary and unjust.

With regard to the procedural issue, the clear language of the consent decree only provided for Babcock to continue his studies while the Seminary's appeal was pending. He knew that the Seminary strenuously protested his right to continue his studies, was appealing the denial of its first amendment rights, and gave him no reason to believe that he would get a degree if their appeal was successful. Accordingly, the granting of the consent judgment should have no bearing on the merits of this appeal.

Assuming, arguendo, that the majority's contract theory is applicable, the Seminary's Bulletin is just as much a part of the "contract" as is the Student Handbook. The Bulletin contained a provision of requirements for Graduation which allows a faculty committee to withhold a student's degree if, in the opinion of the committee, the student is unfit for spiritual, moral, mental, or other reasons. The faculty committee made such a determination, finding Babcock unfit religiously and spiritually to receive a ministerial degree. Babcock did not appeal this decision to the Seminary president. Babcock cannot claim ignorance of the contents of the bulletin - he was a graduate student well versed in the English language. The S.A.C.S. did not require the Seminary to delete this language as a prerequisite to accreditation and it is not proper for this court to treat this provision as if it has no validity or does not exist. Assuming the validity and enforceability of this provision, the faculty committee acted, Babcock did not appeal to the president, and the decision is final.

The majority refuses to recognize the validity of this action because the faculty committee did not articulate some specific reasons for its decision. How was the faculty committee to be more specific - should it have enumerated the

teachings of Jesus Christ as enunciated in the Holy Bible and then explained how Babcock's conduct fell short of those religious standards? If so, would our court then have the right to review and ultimately determine the correctness of a decision based on spiritual and religious considerations? Civil courts have no authority to substitute their opinions for those of religious bodies acting on spiritual or ecclesiastical grounds, and we should not do so in this case.

The foregoing reasoning assumes that this dispute is a secular matter subject to judicial review. I do not agree with this approach. Although Babcock is a student, he is also a seminarian He was admitted to a religious institution for advanced theological training after professing a calling to the ministry and meeting other qualifications not required in a purely secular institution. He attended tuition free because the Southern Baptist Convention funds the Seminary as part of its religious mission.

The status of the Seminary as a church, its mission and its relationship with its ministers is set out in detail in E.E.O.C. v. Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th Cir. 1981), all of which apply to the Southern Baptist Seminary. A reading of that well-reasoned opinion describes the special relationship that exists between a church and its ministers and the constraints placed upon civil courts in connection with that relationship. Although Babcock cannot have his ministerial license withdrawn by action of the Seminary, he cannot represent that his credentials as a minister have the stamp of approval of the Seminary without having been awarded their degree.

The Seminary has an important interest, protected by the Constitution, to determine which ministers meet the spiritual, religious and moral standards of the Southern Baptist Convention and to award its Doctor of Divinity degree only to

those applicants who meet those standards. By awarding the degree the Seminary represents to the world that the degree recipient has met all of the spiritual, moral and religious requirements of the Convention and is fully qualified to minister to the spiritual needs of the church to which he is called. The determination that a ministerial student is qualified to go forth into the public ministry and to carry out the teachings of the Convention is not a judgment call subject to review by the civil authorities.

Accordingly, I would reverse the judgments of the trial court, vacate the injunctions and dismiss Plaintiff's petitions.

THE SUPREME COURT OF
THE STATE OF LOUISIANA

RUDOLPH G. BABCOCK

VS. NO. 90-C-0341

NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY

- - - - - -

IN RE: New Orleans Baptist Theo/Sem.; - Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 89CA-233, 89CA-1248; Parish of Orleans Civil District Court Div. "B" Number 87-15087

- - - - - -

March 30, 1990
Denied.

WFM
JLD
JCW
HTL

CALOGERO & COLE, JJ., would grant the writ.

Supreme Court of Louisiana
March 30, 1990

(signed)
Clerk of Court
For the Court

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET NO.

RUDOLPH G. BABCOCK
versus
NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY

FILED: _____ _____
DEPUTY CLERK
(Date Entered: August 20, 1987).

ORDER

Considering the foregoing Petition:

IT IS ORDERED THAT the New Orleans Baptist Theological Seminary be and is hereby temporarily restrained until August 24, 1987, from interfering with Rudolph G. Babcock's right to register for courses in the fall semester on August 20 or 21.

IT IS FURTHER ORDERED that Defendant, New Orleans Baptist Theological Seminary, show cause on the 24th day of August, 1987, at 9:00 A.M. why a preliminary and/or permanent injunction should not be issued enjoining New Orleans Baptist Theological Seminary from dismissing Rudolph G. Babcock and from interfering with his career goals and studies, relative to the allegations in the attached petition.

New Orleans, Louisiana, this 19 day of August, 1987.

(signed)
J U D G E

PLEASE SERVE:

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY
Through its President and Executive Officer
Dr. Landrum P. Leavell
3939 Gentilly Boulevard
New Orleans, Louisiana 70126

August 24, 1987
Temporary Restraining Order and
entire matter continued to September 1, 1987.
TRO to continue and remain in full force and effect.

(signed)
Judge

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET NO.

RUDOLPH G. BABCOCK
versus
NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

FILED: September 3rd, 1987 (signed)
DEPUTY CLERK
(Date Entered: September 4, 1987)

ORDER

Plaintiff's Petition for Specific Performance and Injunctive Relief and Defendant's Exception thereto came on for hearing on September 1, 1987. Present were:

Ellis B. Murov -For Rudolph G. Babcock;

A. Morgan Brian, -For New Orleans Baptist
Richard T. Simmons Theological Seminary.

Considering the stipulations of counsel as orally recorded on September 1, 1987;

IT IS ORDERED that the Temporary Restraining Order issued on August 19, 1987 (see attached) be and is hereby extended until September 11, 1987.

New Orleans, Louisiana, this 3rd day of September, 1987.

(signed)
J U D G E

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET 4

RUDOLPH G. BABCOCK
versus
NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY

(Date Entered: March 18, 1988)

JUDGMENT ON EXCEPTION
OF LACK OF JURISDICTION

The exception of lack of jurisdiction over subject matter filed on behalf of the defendant New Orleans Baptist Theological Seminary came on for hearing on December 21, 1987, and was taken under advisement.

Representation: **Richard T. Simmons, Esq. and A. Morgan Brian, Esq.,** attorneys for New Orleans Baptist Theological Seminary
Ellis Murov, Esq., Attorney for Rudolph G. Babcock.

After considering the exception, the memoranda, the pleadings, the testimony, the evidence and argument of counsel and the law and for the written reasons assigned,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be judgment herein dismissing the exception of lack of jurisdiction, reserving unto the defendant the right to file responsive pleadings within sixty days.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the temporary restraining order be and the same is hereby continued until further orders of the Court.

New Orleans, Louisiana, this 18th day of March, 1988.

(signed)
JUDGE

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET NO.

RUDOLPH G. BABCOCK
versus
NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY

FILED: _____ DEPUTY CLERK: _____
(Date Entered: May 25, 1988)

ORDER

Considering the foregoing Motion;

As there is no opposition from Defendant, New Orleans Baptist Theological Seminary, to a further extension of the Temporary Restraining Order,

IT IS HEREBY ORDERED that the Temporary Restraining Order issued on August 19, 1987 (see attached) be and is hereby extended until May 22, 1988.

New Orleans, Louisiana, this 20th day of May, 1988.

(signed)
J U D G E

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET 5

RUDOLPH G. BABCOCK

versus

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY
(Date Entered: June 3, 1988)

FINAL JUDGMENT

This cause came on for rendition of a final judgment on the merits, by way of the mutual consent of the parties (except that defendant does not consent to the hereinafter part of the judgment which overrules its peremptory exception, and defendant hereby fully reserves its right to appeal this judgment), in lieu of the trial on the merits for a preliminary and a permanent injunction that had been fixed for June 1 and 2, 1988.

Present: ELLIS B. MUROV, ESQ.
DEUTSCH, KERRIGAN & STILES
Attorneys for plaintiff

A. MORGAN BRIAN, JR., ESQ.
RICHARD T. SIMMONS, ESQ.
Attorneys for defendant

After considering the pleadings, the record, the representations of counsel as to the consent agreement between the parties, the reservation of appeal rights by the defendant, and the written confirmation of that mutual consent and reservation by undersigned counsel, the Court being of the opinion (for the reasons orally assigned this day) that the law and the evidence are in favor of the following; it is therefore:

ORDERED, ADJUDGED, AND DECREED that the Court's interlocutory judgment dated March 18, 1988 which overruled defendant's peremptory exception to the Court's subject-matter jurisdiction be and it hereby is reconfirmed as the Court's jurisdictional adjudication in this final judgment.

FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff be and he hereby is granted a permanent injunction against defendant, so that NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY hereby is prohibited from dismissing RUDOLPH G. BABCOCK based upon any of his conduct or activities occurring on or before August 19, 1987 (but this injunction does not apply to any other facts and circumstances that may have occurred after said date or hereafter may occur and which may give rise to defendant's rights to initiate its dismissal procedures against plaintiff).

FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff RUDOLPH G. BABCOCK be and he hereby is reinstated as a beneficiary of a $400.00 grant from the defendant's Lowrey B. Eastland Memorial Fund, for the SEMINARY's Fall Term of 1987.

FURTHER ORDERED, ADJUDGED, AND DECREED

that each party shall bear its own costs.

JUDGMENT READ, RENDERED, AND SIGNED in open court at New Orleans, Louisiana, on this 31 day of May, 1988.

(signed)
J U D G E

Consented to and approved (but with full reservation of defendant's rights to appeal this judgment), and hereby submitted to the Court for signing, on May 23, 1988.

(signed)
ELLIS B. MUROV (T.A.)
DEUTSCH, KERRIGAN & STILES
755 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 581-5141
Attorneys for Plaintiff,
RUDOLPH G. BABCOCK

(signed)
A. MORGAN BRIAN, JR. (T.A.)
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 528-9500
Bar No. 3449
Attorney for defendant,
NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

A TRUE COPY

(signed)
DEPUTY CLERK, CIVIL DISTRICT COURTS
PARISH OF ORLEANS
STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

NO: 89-10425 DIVISION "E" DOCKET 5

RUDOLPH BABCOCK

v.

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

PLEASE SERVE:

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY
Through its President and Executive Order
Dr. Landrum P. Leavell
3939 Gentilly Boulevard
New Orleans, Louisiana 70126

(Date Entered: May 12, 1989)

ORDER

All evidence herein having been presented and the evidence being in favor of plaintiff,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

(a) A temporary restraining order be issued prohibiting the School from dismissing Petitioner by refusing to allow him to graduate May 20, 1989 and requiring the School to issue to petition the Master of Divinity degree which he has earned.

(b) After due proceedings be had, a preliminary and/or permanent injunction be issued prohibiting the School from

dismissing Petitioner by refusing to allow him to graduate and requiring the School to issue to him the Master of Divinity degree which he has earned.

(c) After due proceedings be had, all costs and attorneys' fees to be assessed against Defendant as a result of forcing Babcock to bring an action to compel defendant to honor an order of this Court.

(signed)
JUDGE 12 May 1989

May 12, 1989

A status conference will be held with attorneys for all parties on Monday May 15, 1989 at 10:30 A.M.

(signed)
A. Morgan Brian, Jr.

(signed)
Bernard _____

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 89-10425 DIVISION "B" DOCKET 5

RUDOLPH BABCOCK

VS.

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

(Date Entered: May 19, 1989)

JUDGMENT ON APPLICATION FOR A PRELIMINARY INJUNCTION, DISSOLUTION OF THE TEMPORARY RESTRAINING ORDER AND DECLINATORY EXCEPTION

This lawsuit was originally allotted to Division "E" of the Civil District Court but was transferred to Division "B" in accordance with Rule 8 Section 9 of the Civil District Court Rules since it arises out of case number 87-15087 entitled "Rudolph G. Babcock v. New Orleans Baptist Theological Seminary," which is presently on appeal to the Court of Appeal, Fourth Circuit.

The Application for Preliminary Injunction on behalf of Rudolph Babcock and the Declinatory Exception and Motion to Dissolve the Temporary Restraining order filed on behalf of the New Orleans Baptist Theological Seminary was submitted on affidavits.

Representation: JoAnne Ferriot, Esq., attorney for Rudolph G. Babcock;
A. Morgan Brian, Jr., Esq.
attorney for
New Orleans Baptist Theological Seminary.

After considering the pleadings, the affidavits, the memoranda and the law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be judgment herein dismissing the Motion to Dissolve the Temporary Restraining Order and the Declinatory Exception filed on behalf of the New Orleans Baptist Theological Seminary;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein granting a preliminary injunction in favor of Rudolph G. Babcock and against New Orleans Baptist Theological Seminary prohibiting the New Orleans Baptist Theological Seminary from refusing to confer the Master of Divinity Degree upon Rudolph G. Babcock during the regular graduation exercises presently set for May 20, 1989;

IT IS FURTHER ORDERED that the petitioner Rudolph G. Babcock post a bond of $1,000.00

New Orleans, Louisiana, this 17th day of May, 1989. 2:45 P.M.

(signed)
JUDGE

COURT OF APPEAL,
FOURTH CIRCUIT
FILED MAY 19 1989
DANIELLE SCHOTT
CLERK OF COURT

NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY NO. 89-C-0948

versus

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

RUDOLPH G. BABCOCK

SUPERVISORY WRITS CIVIL DISTRICT COURT,
PARISH OF ORLEANS
DIVISION B, NO. 89-10425
HONORABLE ROBERT A. KATZ, JUDGE
(Date Entered: May 19, 1989)

Writ Granted
Stay Order Issued

The subject matter of this controversy is on appeal to this court under docket No. 89-CA-0233 and is scheduled for hearing in July, 1989. The order for appeal was entered on July 18, 1988, the record was lodged in the court in February, 1989 and neither party has filed a motion for an expedited hearing.

Because the appeal involves serious constitutional issues, the resolution of the appeal will be dispositive of the issue posed by this writ, and the appeal will be rendered moot if the relator is required to issue a diploma at this time, we hereby

STAY the execution of the preliminary injunction issued on May 17, 1989 in proceedings No. 89-10425, and we also STAY all further proceedings in this case pending the final disposition of the appeal pending in case No. 89-CA-0233 of the docket of this court.

However, since relator did not advise respondent of its intention to withhold issuance of his diploma until May 9, 1989 and further, because it is apparent that respondent was led to believe that he would graduate with the other members of his class at the ceremonies of May 20th, 1989, in the interest of fairness, we order that relator, New Orleans Baptist Theological Seminary, allow respondent, Rudolph G. Babcock, to fully participate in all commencement exercises and activities to the same extent as other graduates except that New Orleans Baptist Theological Seminary is relieved of the obligation of issuing and delivering a diploma at this time.

New Orleans, Louisiana this 19th day of May, 1989.

JUDGE JOAN BERNARD ARMSTRONG

JUDGE PHILIP C. CIACCIO

JUDGE ROBERT L. LOBRANO

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 89-10425 DIVISION "B" DOCKET 5

RUDOLPH G. BABCOCK

versus

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

FILED: _____ _____
Deputy Clerk
(Date Entered: May 26, 1989)

MOTION & ORDER FOR DEVOLUTIVE APPEAL

ON MOTION of defendant NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY, and on suggesting to the Court that: (a) defendant is aggrieved by the judgment granting a preliminary injunction and other relief, that was rendered and signed in this matter on May 17, 1989; (b) formal notice of that judgment was delivered by the Clerk to counsel on that same date; (c) the 15-day delay for an appeal therefrom, pursuant to CCP Article 3612, runs through June 1, 1989; and (d) defendant now desires to, and hereby does, appeal devolutively to the Louisiana Court of Appeal for the Fourth Circuit, from the entirety of the said judgment which, in addition to granting plaintiff a preliminary injunction, also overruled defendant's exception to subject matter jurisdiction (which was based on First Amendment religious grounds) and denied defendant's motion to dissolve the TRO and award damages for wrongful issuance; it is therefore:

ORDERED that a devolutive appeal of the entirety of the

judgment rendered and signed May 17, 1989, be and it hereby is granted to defendant, returnable to the Louisiana Court of Appeal for the Fourth Circuit in accordance with law, pursuant to Articles 3612 and 2121 of the Code of Civil Procedure.

New Orleans, Louisiana, May 26, 1989.

(signed)
J U D G E

(signed)
A. MORGAN BRIAN, JR. (T.A.)
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 528-9500
Bar Number 3449
Attorney for defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed, postage prepaid, to each other attorney and unrepresented party of record.

New Orleans, Louisiana
May 25, 1989
A. MORGAN BRIAN, JR.

STATE OF LOUISIANA
CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

NO. 89-10425 DIVISION "B" DOCKET 5

RUDOLPH G. BABCOCK, ~~APPELLANT~~/APPELEE
(indicate which)
versus
NEW ORLEANS BAPTIST
THEOLOGICAL SEMINARY, APPELLANT/~~APPELEE~~
(indicate which)

FORM "C" TO BE FILED WITH AN APPEAL - to be completed by the attorney for the appellant and filed with the Clerk, Civil District Court for the Parish of Orleans, Room 402, 421 Loyola Avenue, New Orleans, La. 70112.

Names and Addresses of attorneys for all parties and who they represent;

Representing/APPELLANT/APPELEE
(indicate which)

ATTORNEY:

A. MORGAN BRIAN, JR.
700 Camp Street
NEW ORLEANS, LA. 70130

Appellant, New Orleans Baptist Theological Seminary

RICHARD T. SIMMONS
305 Barrone Street
NEW ORLEANS, LA. 70112

SAME APPELLANT

ELLIS B. MUROV
755 MAGAZINE STREET
NEW ORLEANS, LA. 70130

APPELEE,
RUDOLPH G. BABCOCK

Names and addresses of parties not represented by counsel:

NONE

GIVE BRIEF DESCRIPTION OF NATURE OF THE CASE AND JUDGMENT RENDERED BY TRIAL COURT: Suit for injunction and specific performance. Judgment 5-17-89 granted preliminary injunction, denied motion to dissolve TRO, and denied exception to subject-matter jurisdiction (based on First Amendment Religious Freedom grounds).

A. MORGAN BRIAN, JR.
ATTORNEY FOR APPELLANT
BAR # 3449

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA
210 Civil Courts Building
421 Loyola Avenue
New Orleans, Louisiana 70112

Patrick M. Schott
Chief Judge

Danielle A. Schott
Clerk of Court

Jim Garrison
Denis A. Barry
Robert J. Klees
William H. Byrnes, III
Philip C. Ciaccio
Robert L. Lobrano
Charles R. Ward
David R. M. Williams
Joan Bernard Armstrong
Steven R. Plotkin
Rudolph F. Becker, III

JUDGES

July 19, 1989

Mr. Ellis B. Murov
Ms. Joanne C. Ferriot
Deutsch, Kerrigan & Stiles
755 Magazine Street
New Orleans, Louisiana 70130

A. Morgan Brian, Jr.
700 Camp Street
New Orleans, Louisiana 70130

Re: Rudolph G. Babcock v.
New Orleans Baptist Theological
Seminary - No. 89-CA-1248

Dear Counselors:

The panel of our Court which heard case No. 89-CA-0233 entitled Babcock v. New Orleans Baptist Theological Seminary, will also be assigned to hear case No. 89-CA-1248, Babcock v. New Orleans Baptist Theological Seminary. In the interests of judicial economy, the panel has decided to consolidate the two cases for review.

The panel also believes oral argument is unnecessary in Case No. 89-CA-1248, and that case will be considered on the record as well as your briefs. As you know, the appellant's brief is due on July 24, 1989 and the appellee's brief is due no later than August 14, 1989.

Please refer any questions you may have on this matter to me.

Sincerely,
(signed)
Danielle A. Schott
Clerk of Court

DAS/ckf

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, New Orleans, January 17, 1990

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THIS CASE ENTITLED

BABCOCK v. NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

NO. 89-CA-0233 c/w 89-CA-1248 (CIACCIO, J. votes to grant.)

Very truly yours,

DANIELLE A. SCHOTT
CLERK OF COURT

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET NO. ___

RUDOLPH G. BABCOCK

VERSUS

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

FILED: _____ DEPUTY CLERK

(Date Entered: August 24, 1987)

EXCEPTION OF LACK OF JURISDICTION
OVER SUBJECT MATTER OF THE ACTION

Now into Court, through its undersigned counsel, comes the defendant, New Orleans Baptist Theological Seminary, appearing herein solely for the purpose of this exception, and excepts to the plaintiff's petition on the following grounds:

That this Honorable Court is without jurisdiction over the subject matter of the action in the above captioned matter under the provisions of the First and Fourteenth Amendments of the United States Constitution which provides for the Separation of Church and State and prohibits actions by the Courts. That the defendant, New Orleans Baptist Theological Seminary, is classified as a church and the subject matter of the plaintiff's suit is about internal affairs of administration of the religious institution (church) and its ministerial student (Ministers).

WHEREFORE DEFENDANT PRAYS that this Exception be maintained, and that there be judgment herein in favor of

defendant and against plaintiff, and that plaintiff's demands be dismissed at his cost.

(signed)
RICHARD T. SIMMONS
Attorney for Defendant
307 Baronne Building
New Orleans, Louisiana 70112
504-522-1668

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served on the opposing party by handing same to attorney of record personally.

August 24, 1987

(signed)
Richard T. Simmons

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-15087 DIVISION "B" DOCKET 5

RUDOLPH G. BABCOCK

versus

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

Filed: _____ _____

Deputy Clerk

(Date Entered: March 24, 1988)

ANSWER

Defendant NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY ("SEMINARY"), with full reservation of all of its rights and remedies regarding its peremptory exception to the Court's subject-matter jurisdiction which the Court overruled by judgment dated March 18, 1988, hereby answers the petition of plaintiff ("BABCOCK") as follows:

FIRST

Except as hereinafter expressly qualified, SEMINARY: (a) denies for lack of sufficient information, paragraph 1 of the petition; (b) denies paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 15; and (c) shows that no answer is required to paragraphs 10,

13, 14, and 16 (the latter two now being moot).

SECOND

Further answering paragraphs 1 and 15, SEMINARY admits only BABCOCK's age and domicile.

THIRD

Further answering paragraph 2, SEMINARY shows that its correct status is that of a Louisiana non-profit corporation, domiciled in Orleans Parish, which is a wholly religious and sectarian theological educational institution of higher learning, wholly owned, controlled, and operated by the Southern Baptist Convention ("SBC") for the sole non-secular and sectarian purpose of training church people for Christian ministries.

FOURTH

Further answering paragraph 3, SEMINARY shows on information and belief that there have been one or more de facto separations in which BABCOCK's present wife ("Suzanne") has left their matrimonial domicile for temporary periods of time on account of marital discords and/or abuses perpetrated by BABCOCK which caused Suzanne to fear for her physical safety and/or that of her children by her prior marriage, and/or to regard her marriage to BABCOCK as then incompatible and unduly burdensome.

FIFTH

Further answering paragraph 4, SEMINARY shows that

BABCOCK entered SEMINARY's Master of Divinity degree ("M.DIV.") program and curriculum as a ministerial student and for the expressed purpose of pursuing a church-related vocational ministry upon graduation.

SIXTH

Further answering paragraphs 5, 6, 7, and 8, SEMINARY admits only the Student Handbook, the Bulletin (or catalogue), the institutional policies, and the two referenced letters, per se; but shows that these are all writings which best speak for themselves and therefore are fully pleaded herein by reference.

AND NOW FURTHER ANSWERING the petition, SEMINARY avers as follows:

SEVENTH

This Court and all other secular courts lack jurisdiction over the subject matter of this lawsuit, viz., SEMINARY's own internal ecclesiastical purposes, criteria, guidelines, policies, procedures, governance, admission, discipline, retention, and expulsion of and in relation to its ministerial students, which subject matter is wholly religious, not secular, and therefore is insulated and protected from secular court scrutiny, judicial determination, and adjudication, by the United States Constitution's First Amendment, under both its Establishment and Free Exercise of Religion Clauses, and the related federal caselaw doctrine of separation of church and state; and, accordingly, SEMINARY repleads herein its preemptory exception of lack of subject-matter jurisdiction which it previously pleaded and tried in limine but which this Court overruled.

EIGHTH

Both the SBC and SEMINARY have the legal status of "church" for First Amendment purposes; and therefore all aspects of SEMINARY's relationship with its ministerial students (including the retention and/or termination thereof) have the corresponding legal status of "church-member" and/or "church/minister".

NINTH

SEMINARY's internal discipline and governance of its ministerial students in general, and of BABCOCK in particular, including its decision that BABCOCK had demonstrated he was not suited for vocational Christian ministry and SEMINARY's consequent decision to terminate him as a student and to disenroll him from further studies in pursuit of the M.Div. degree at SEMINARY, are all matters which are entirely non-reviewable by this Court and/or any other secular court or tribunal, because they are ecclesiastical matters completely within the ambit of exclusive First Amendment control and protection.

TENTH

Alteratively, there is no formal contract between SEMINARY and BABCOCK as to which he is entitled to compel any of the specific performances by SEMINARY that he has sued for in this matter.

ELEVENTH

Alternatively, the limited kind of quasi-contractual arrangement which the law imputes to the school-student relationship involved in both secular and sectarian colleges and universities (if applicable at all per se to SEMINARY here, which is denied) also does not entitle BABCOCK to any of the aforesaid specific performances.

TWELFTH

Alternatively, SEMINARY has performed fully and properly any and all contractual obligations and duties it owes or may owe to BABCOCK in connection with his relationship to SEMINARY as a student; so that, consequently, judicial remedies for specific performance are moot or irrelevant.

THIRTEENTH

Alteratively, SEMINARY has not breached any contractual obligation or duty which it may be held to owe to BABCOCK as one of its students.

FOURTEENTH

Alternatively, BABCOCK has not been damaged by anything SEMINARY did or failed to do.

FIFTEENTH

Alternatively, SEMINARY's policies and procedures for

admitting, retaining, graduating, and expelling students are proper and reasonable; and they were correctly, properly, and reasonably interpreted, implemented, administered, and applied to BABCOCK in the present matter.

SIXTEENTH

Alternatively, SEMINARY sufficiently exercised and afforded to BABCOCK constitutional due process in SEMINARY's entire procedure of investigating complaints and circumstances regarding BABCOCK, Suzanne, and her two teenaged daughters; in determining whether or not he was properly fit for Christian ministry and continuing his studies for the M.Div. degree; and in concluding not to let him continue as a student and thus disenrolling him.

SEVENTEENTH

Alternatively, on information and belief it is alleged that in 1986 BABCOCK's two teenaged step-daughters and his wife Suzanne all left his matrimonial domicile (a mobile home located on SEMINARY's campus in New Orleans) and move away temporarily to Michigan on account of his physical and emotional abuses to them, and/or other marital and family discords and incompatibilities, which had occurred over a preceding period of time commencing in 1985. In time, they returned to him and reconciled when he promised to correct his offensive ways. SEMINARY put him on disciplinary probation for these problems, including required family and marital counseling; and notified him that he would be expelled if circumstances did not change for the better within a reasonable time.

EIGHTEENTH

Alternatively, it is alleged on information and belief that after said reconciliation BABCOCK did not significantly change his offensive ways, but, rather, continued from time to time to perpetrate said abuses, discords, and incompatibilities, all to the continued distress of Suzanne and her two daughters.

NINETEENTH

Alternatively, on July 31, 1987 BABCOCK had a very ugly fight for Suzanne over the disputed possession of a television set in their on-campus mobile home. In the course of that fracas, he twisted her arm, threatened to break one of her fingers, wrenched the TV set from her grasp, pushed he down on their davenport, hit her on her shoulder blade with his elbow, threatened to smash her face, and verbally abused her, all in front of one of her teenaged daughters. Suzanne personally filed a complaint against BABCOCK for this incident, with SEMINARY's campus security police officers, and they investigated the matter. At the conclusion of the investigation, Suzanne and her daughter packed up and left BABCOCK, moving out of the mobile home and into other housing on campus, for their own protection. BABCOCK constantly interfered with and intimidated both of them while they were packing and moving out.

TWENTIETH

Alternatively, in response to said incident and all that had gone on before, SEMINARY revoked BABCOCK's probation and initiated the appropriate internal disciplinary procedures to determine whether he should be allowed to remain as a

student. After conferences with BABCOCK by SEMINARY's Executive Vice-President, Academic Vice-President, and others, and a meeting of its Student Affairs Committee, SEMINARY decided not to allow BABCOCK to continue his studies for the M.Div. degree and future Christian ministry, but rather to disenroll and expel him. He was formally notified of that decision. He requested reconsideration. After further oral and written submissions by BABCOCK in support of his request for reconsideration, a formal hearing of him and Suzanne was scheduled, he was notified, and it was held before the Student Affairs Committee on the morning of August 19, 1987. Decision by the Committee, however, was deferred pending its receipt of input from the family counselors to whom BABCOCK and Suzanne had been going. But before that could be done, BABCOCK filed this present lawsuit and obtained a temporary restraining order against SEMINARY on the afternoon of August 19, 1987. That TRO required SEMINARY to let BABCOCK register for the 1987 Fall Term and remain in school until the application for preliminary injunction could be heard by this court.

TWENTY-FIRST

Alternatively, on September 1, 1987 at the scheduled hearing of BABCOCK's application for preliminary injunction and SEMINARY's peremptory jurisdictional exception, the parties reached a temporary moratorium agreement to accommodate BABCOCK's request that SEMINARY allow him and Suzanne to present further evidence to the Executive Vice-President and to have an additional hearing before the Student Affairs Committee. In that regard, SEMINARY sent BABCOCK letters dated September 1 and 2, 1987; the Executive Vice-President conferred with him on September 2,

1987; BABCOCK and Suzanne sent their letter of September 3, 1987 to SEMINARY; the Executive Vice-President had a long conference with BABCOCK on the afternoon of September 3, 1987; and another full hearing by BABCOCK and Suzanne was held before the Student Affairs Committee on the morning of September 8, 1987. That same afternoon, the Committee denied BABCOCK's reconsideration request and reinstated for implementation their prior decision of July 31, 1987 to disenroll and expel him. SEMINARY notified him of that final decision, by letter dated September 8, 1987, also advising him of his appeal rights to SEMINARY's President.

TWENTY-SECOND

Alternatively, BABCOCK formally requested an extension of time to perfect his appeal. It was granted. He submitted to SEMINARY his written appeal dated September 13, 1987. By letter to him dated September 18, 1987, SEMINARY's President notified BABCOCK that his written appeal had been carefully studied and diligently considered by the President, but that it was denied and the final decision of the Student Affairs Committee was upheld as SEMINARY's conclusion of the matter.

TWENTY-THIRD

Alternatively, SEMINARY had ample and substantial evidence, as well as valid and proper reasons, for all of its foregoing decisions and actions vis-a-vis BABCOCK and his expulsion.

TWENTY-FOURTH

Alternatively, BABCOCK is not entitled to any injunction (preliminary or permanent) against SEMINARY, nor is he entitled to any further restraint of SEMINARY by way of extensions of the TRO.

TWENTY-FIFTH

Alternatively, in view of all the foregoing circumstances related to BABCOCK's personal character, temperament, morality, and family instability, he is not a suitable candidate for continued study at SEMINARY, for graduation therefrom, for receipt of the M.Div. degree therefrom, and/or for eventual vocational Christian ministry in Southern Baptist churches; and, accordingly, SEMINARY was fully justified in disenrolling and expelling him as a ministerial student.

TWENTY-SIXTH

BABCOCK (as with all other students at SEMINARY) does not pay any tuition whatsoever in order to attend SEMINARY. He pays only a relatively modest matriculation fee and greatly reduced prices for housing and food on the campus, and also buys his own books and supplies. The SBC pays all of the students' tuition and subsidizes a large portion of the food and housing costs on campus, all through the SBC's "Cooperative Program" which is funded entirely by the free-will offerings made by the over 14,000,000 Southern Baptist people who are members of the more than 30,000 Southern Baptist churches which comprise the SBC as a religious denomination.

WHEREFORE defendant NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY prays for: (a) judgment in its favor and against plaintiff, dismissing this entire action with prejudice and at plaintiff's cost; (b) all costs; and (c) all general and equitable relief.

(signed)
A. MORGAN BRIAN, JR. (T.A.)
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 528-9500
Bar Number 3449
Attorney for defendant
NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

Of Counsel
RICHARD T. SIMMONS
307 Baronne Building
305 Baronne Street
New Orleans, La. 70112
Telephone: (504) 522-1668

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed, postage prepaid, to each other attorney and unrepresented party of record.

New Orleans, Louisiana
March 22, 1988

A. MORGAN BRIAN, JR.

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 89-10425 DIVISION "E" DOCKET 5

RUDOLPH G. BABCOCK
versus
NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY

Filed _____ Deputy Clerk _____
(Date Entered:May 15, 1989)

DECLINATORY EXCEPTION

Defendant NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY ("Seminary"), appearing herein solely for the purposes of this exception and not otherwise, and only with full reservation of all its rights and defenses, hereby excepts declinatorily to this entire proceeding, including (but not limited to) the temporary restraining order which was issued and signed on late Friday afternoon, May 12, 1989 by the Court's duty judge, Hon. Robin M. Giarrusso. This declinatory exception is urged pursuant to CCP Article 925(6) on the ground of the Court's lack of jurisdiction over the subject matter of the action, based upon the legal doctrine of religious freedom and separation of church and state pursuant to both the Free Exercise Clause and the Establishment Clause of the First Amendment to the United States Constitution, and to Article I, Section 8, of the Louisiana Constitution of 1974.

Attached hereto as the supporting memorandum of authorities required by the Court's Rule 9, Section 2, is a copy

of SEMINARY's opening brief dated March 30, 1989 for the Fourth Circuit Court of Appeal in Case No. 89-CA-0233 entitled, "Rudolph G. Babcock versus New Orleans Baptist Theological Seminary."

(signed)

A. MORGAN BRIAN, JR. (T.A.)
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 528-9500
Bar Number 3449
Attorney for defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed, postage prepaid, to each other attorney and unrepresented party of record.

May 15, 1989

Morgan A. Brian, Jr.